Triennial Review Phase 1 - Public Scoping

Public Meetings Summary
July 2005

Introduction

In May 2005, the Idaho Department of Environmental Quality (DEQ) hosted a series of three public scoping meetings in Pocatello, Boise, and Moscow to solicit comments on how to improve water quality standards (WQS). This public scoping effort represented an additional new step in the public involvement process for triennial review of WQS in Idaho. The intent of these meetings was to provide a forum to discuss with the public potential triennial review topics and priorities. The meetings represented a two-way educational process – as DEQ staff informed attendees about WQS, and as attendees informed DEQ about their concerns.

DEQ set the stage by presenting information, such as standard intent; need for review; and potential approaches, on the following topics:

- Antidegradation
- Bacteria
- Designated uses
- Dissolved oxygen
- Low flows and standard application
- Miscellaneous
- Mixing zones
- Nutrients
- Temperature
- Toxics

These topics arose from a combination of DEQ analysis/experience, conversations with EPA, and initial targeted stakeholder input. DEQ welcomed discussion around additional topics that were not included on this preliminary list.

Summary

This summary provides a record of comments, suggestions, and concerns received through the public scoping meetings. This summary was developed from meeting notes, not a formal transcript, and has not been reviewed by meeting participants. This summary does not necessarily reflect the views of DEQ, nor does it indicate priorities for future rulemaking activities.

Although no clear priorities emerged as a result of these public scoping meetings, some of the most frequently discussed topics included designated uses, temperature, flow and application of standards, and sediment.

Topics of discussion are presented alphabetically, in no order of priority. A general summary of the discussions for each topic is provided first, followed by any specific comments or questions raised by meeting participants. Although not summarized below,

many participants expressed concerns about the difficulties and impracticalities they have experienced with the TMDL process in implementing WQS.

ANTIDEGRADATION

There was some concern about the lack of an implementation policy for antidegradation in Idaho. A few participants expressed that antidegradation is important to consider because it is the only preventative measure to keep waters off the 303(d) list. It was further suggested that DEQ should make a concerted effort to ensure a more robust antidegradation policy is developed and implemented.

BACTERIA

The public's concerns generally focused on the applicability of secondary contact recreation as a beneficial use in Idaho's waters and how naturally occurring bacteria should be considered when making water quality decisions. Specific comments that were made include:

- The difference between how primary and secondary contact recreation use designations are assigned is nebulous. The difference in the probability of ingestion is ill-defined. DEQ should consider changing this to one classification since the criteria for primary and secondary are the same.
- How does DEQ look at older fecal coliform data? What would be a better measure than *E. coli* as an indicator of human waste? Does DEQ plan to adopt a new bacteria indicator in the next three years? DEQ indicated that adoption in the next three years is unlikely; however, there may be a future move toward the use of enterococci as the indicator organism.
- Has DEQ considered a broader examination of naturally occurring bacteria (from, for example, avian species)? It would be beneficial to know how much bacteria comes from non-human sources. DEQ should routinely perform the analysis to differentiate and quantify human from non-human sources, prior to requiring a TMDL.
- E. coli spikes are possible where cattle have access to streams. If there is no flexibility provided for these spikes then agricultural businesses could suffer.
- What impacts does *E. coli* have on animals? Bacteria affect more than human health.
- There are water bodies located remotely from human centers that show high *E. coli* readings. How is this being addressed, especially if human health is not threatened?

DESIGNATED USES

Many meeting participants believed beneficial uses were a very important topic to address. The primary issue seemed to be the lack of application (designation) of uses (resulting in presumed uses) and inappropriate use designations. Many participants expressed concerns that if uses are inappropriate, then the TMDL process is extremely

difficult and implementation becomes impractical. Further discussion revolved around the notion of existing uses, especially in waters where agriculture return flows create a more permanent water body that wouldn't naturally exist. Several specific comments are as follows:

- Canals are currently considered waters of the U.S. How does DEQ handle these?
- The relevance/existence of modified aquatic life use was questioned given that no Idaho waters are currently designated as such, and that no criteria exist for that use.
- Doing away with current beneficial uses and developing a new suite of uses is a questionable approach. The primary issue appears to be the lack of use designation as well as inappropriate use designation.
- Why did EPA disapprove the Lower Boise aquatic life use changes that DEQ had completed? DEQ explained that EPA took issue with the segmenting of water bodies, insufficient data (on flows, aquatic life present, potential for restoration), and Idaho's seasonal cold water temperature criteria, among other concerns.
- Stocked streams should not be held to "cold water" uses. DEQ noted that it has considered a "put and take fishing" beneficial use.

DISSOLVED OXYGEN

A few participants thought the intergravel dissolved oxygen criterion warranted attention given the underutilization of the standard.

LOW FLOWS AND APPLICATION OF STANDARDS

Several comments suggested that flow/application of standards is one of the most important issues given that it deals with low, intermittent, and ephemeral waters and plays a large role in the quality of the water. Specific comments are as follows:

- There may be a need to classify water bodies as being ephemeral, intermittent and perennial. DEQ should consider a sliding-scale approach based on such things as drainage area and flow.
- There are problems with attempting to classify ephemeral versus intermittent streams. This could be a slippery slope because there are many factors that contribute to the hydrologic characteristics of a particular water body. Important concepts to consider in reclassification include precipitation cycles and climatic trends. Changes in land use may have an impact (example: vegetation removal). Historical data is scarce and may not adequately illustrate long-term trends. If this is pursued, DEQ should approach reclassification carefully. One approach to this issue could be to combine parameters to account for the dynamic nature of systems (flow, drainage basin area, etc.).
- DEQ should recognize that public health risks do exist for intermittent streams, and should not remove human health toxics criteria from them.

- DEQ should be consistent in how it addresses intermittent streams – especially in TMDLs.
- At what point do you assess flow for intermittent waters? There are significant monitoring challenges for these kinds of streams.
- Diversions resulting from water rights alter flow and change the beneficial uses. Some rivers do not have flow downstream because of such diversions. Currently, standards appear to be misapplied in these situations, which results in problematic TMDLs. This scenario should be considered, and it may be prudent to delist some rivers.
- If a channel has a defined bed and banks, fish will be there at some point during the year. Salmonid species may spawn in intermittent streams. Maybe there should there be a category for "seasonal salmonid spawning uses." It would be good to tailor uses for special circumstances (not delete or exempt broad categories of stream types).
- What if two bodies with different uses unite? Is there a mixing zone of sorts? For example, if an ephemeral stream entered a larger, compliant stream with stricter WQS?

MIXING ZONES

Several comments suggested the need to clarify when mixing zones are and are not allowed. In general, the public felt that DEQ needs greater consistency in the application of mixing zones. Specific comments that were made regarding mixing zones include:

- There may be a need to apply a different approach to assigning mixing zones for temperature, dissolved oxygen, than for other contaminants, such as toxics.
- It seems like there should be consideration for a continuum (or a "transition zone") in the mixing zone and seasonal considerations for parameters such as temperature.
- Special consideration should be given to substances which accumulate in sediment or fish (bioaccumulators).
- Threatened and endangered species should be taken into account when applying mixing zones.
- How does DEQ address mixing zones near cities?
- Some feel that mixing zones should not exist in order to be more protective of aquatic life and human health.

NUTRIENTS

Specific comments made about nutrients include:

- Narrative criteria need to better define when problems occur (when excess nutrient levels are present).
- Narrative criteria are not adequate and broad sweeping language will not work.
- Numeric criteria should be established to address nutrients; however direct water column nutrient criteria will not work. For example, nutrient targets set by a

TMDL have been met, yet there are still problems with excessive macrophytes. Suggest other parameters be examined that are related to nutrients (such as macrophytes).
- There is currently a trend to focus on nutrient enhancements, such as placement of fish carcasses. How would a *minimum* nutrient level approach work?

SEDIMENT

Sediment arose as an issue that was not on DEQs initial list of preliminary topics. This is a highly relevant problem given many water bodies are included on the 303(d) list as being impaired by sediment. It is unclear to the public how the narrative criteria are applied in determining whether a water body is impaired for sediment.

TEMPERATURE

Many considered temperature to be a very important topic to address. A number of meeting participants concurred that some type of consensus should be achieved prior to moving forward with proposing changes to the temperature criteria. Specific comments made about temperature include:

- DEQ heard several comments suggesting that a summit of stakeholders or a technical advisory group be convened to examine the issues associated with temperature and determine what direction Idaho should take in revamping temperature standards.
- DEQ should think about temperature as a regional issue. There is a need to consider downstream waters. Since Oregon and Washington adopted EPA guidance, maybe Idaho should as well so the EPA guidance has a chance to work.
- "Narrative" criteria may not be the best approach because they are vague and generally too broad.
- DEQ should consider gearing temperature standards towards specific uses. For example, DEQ should refine water body segments to isolate particular fish uses (such as migration or salmonid spawning). It was noted that this might become a logistical scale problem. Regardless, there needs to be consideration given to protecting refugia that are present along the continuum of a water body.
- One approach could be to set "species-specific" criteria.
- DEQ should not rush into setting the bar immediately, and should be mindful of attainability. By setting bar too high, there could be a huge impact on economy and communities. We may never stop spending money to reach the unattainable.
- DEQ must somehow account for natural background conditions, where there is naturally warm water.
- Reduction in shade has an influence on temperature - DEQ should examine surrogate shading and tie results into natural background conditions.
- DEQ should consider that shading may not be the main contributing factor – other factors that impact the hydrologic regime (such as clear cuts and/or land use) also impact stream temperatures.

- DEQ should consider geothermal inputs to a water body.
- Constructed wetlands raise water temperatures, which creates a tension – is clean water or cold water more important?
- Changing temperature criteria may not be the solution. It appears as though there is more of an issue dealing with EPAs disconnect with DEQ regarding standards. DEQs job is to support Idaho citizens and clean water. There must be weight behind DEQ rules.

TOXICS

A number of meeting participants supported updating toxics criteria given the age of the current criteria as well as the change in fish consumption rates. DEQ may want to consider a sliding scale approach given some communities eat more caught fish than others. There also may be a need to look at toxics and mixing zones together.

MISCELLANEOUS COMMENTS

There were some miscellaneous comments that were technical in nature and others that were more policy-oriented. These comments are summarized below:

- Technical comments:
    - Clarification is needed on how tribes address WQS - is the default for tribes EPA guidance or Idaho standards?
    - DEQ should consider further stream segmentation in terms of points of compliance.
    - Invasive plants/vegetation may pose a threat to aquatic life - DEQ should consider this even though some plants (for example, Russian olive trees) may provide shade.
    - It is very difficult to reach water quality goals when criteria set on water bodies cannot realistically be met. Is there a middle ground between science and on-the-ground reality? This is a serious disconnect for TMDL establishment.
    - DEQ should clarify guidance on the application of natural background conditions.

- Policy/process-related comments:
    - Multiple meeting participants felt that DEQ should consider addressing the low-hanging fruit first (address easiest/least controversial issues first).
    - A process-related question arose in discussing how the state and federal WQS revision approval processes are handled separately. This comment was aimed at disconnects and delays that occur between Idaho adoption and EPA approval of revised water quality standards.
    - Negotiated rulemaking is difficult to participate in if you are not near Boise. There needs to be a mechanism to include interested parties from other parts of the state in a meaningful, timely manner (teleconference calls, conference calls, virtual private networks, etc.). There are likely

only a dozen or so people who are active and would participate in this process, along with WAGs and BAGs.

- How will DEQ align triennial review work with ongoing rulemaking that addresses WQS? It was noted by DEQ that rulemaking resulting from this review won't be ready for consideration by the Legislature until 2007.

Public Meeting Participants

May 23, 2005 – Pocatello

- Mike Rowe (DEQ)

May 24, 2005 – Boise

- John Field (Weiser WAG)
- Art Correia (Weiser WAG)
- LaVelle Braun (Southwest BAG)
- Vern Lolley (Weiser WAG)
- Larry Pennington (Mid Snake WAG)
- Zig Napkora (BLM)
- Lynn Tominaga (IGA)
- Justin Hayes (ICL)
- Brian Hoelscher (IPC)
- Jim Moyer (Southwest BAG)

May 26, 2005 – Moscow

- Bill Dansart (ISCC)
- Ray Haselhuhn (City of Moscow)
- Randal Fox (City of Moscow)
- Kerby Cole (DEQ)
- John Cardwell (DEQ)
- Ken Stinson (Latah SWCD)
- Ken Clark (IASCD)
- Allen Heimgarther (Potlatch)
- Tracy Brown (PCEI)
- Emily Poor (PCEI)
- Ciara Cusack (PCEI)
- Mark Soloman
- Tom Scallorn (City of Moscow)